

James Greensbeilds, Clerk, Appellant.
The Magistrates of Edinburgh, Respond^{ts}.

The Respondents Case.

THAT the Appellant as he acknowledges in his Petition, was in the Year 1694. (after the Abolition of Prelacy in *Scotland*) ordain'd a Presbyter by the late exauctorat Bishop of *Ross* in *Scotland*, and having been some Years in *Ireland*, he return'd again to *Edinburgh*, in the Year 1709. and without any lawful Warrant, set up a Meeting-house there, for Preaching and Publick Worship, contrary to the Method and Usage of the Church of *Scotland*; which Meeting-house being set up in an insulting and offensive Manner, just opposite to the great Church of *Edinburgh*, where four Parishes meet for Publick Worship; the Presbytry of *Edinburgh* summon'd the Appellant to appear before them, to give an Account of himself, and of his presuming without Authority, to exercise the Office of the holy Ministry publicly on the Lord's Day; upon which Summons, the Appellant appear'd before them, and produc'd the Certificate of his Ordination, by the said exauctorat Bishop of *Ross*, with some Testimonials from *Ireland*; but being interrogated by the Presbytry, By what Authority he exercised the Ministry within their Bounds, without being authoris'd for that End, according to Law? he declined the Authority both of the Presbytry and of the National Church, and subscribed the same *coram*, and insisted that the Church had no Jurisdiction over him as to Spiritual Concerns: and being again question'd, adher'd to his Declinator, whereupon the Presbytry did prohibit the Appellant to exercise any part of his Ministry within their Bounds, and recommended it to the Magistrates of *Edinburgh*, to render the Sentence effectual, according to Law.

That the Sentence of the Presbytry being so recommended to the Magistrates of *Edinburgh*, to render effectual, and a Petition sign'd by many hundred Hands of the most considerable of the Neighbourhood, being presented to the Lord Provost and other Magistrates of *Edinburgh*, to desire the Magistrates to that Effect, they cited the Appellant to appear before them, and he appearing, they requir'd him to obey the Act of the Presbytry; which he refusing, they again prohibite him to exercise any part of his Ministry within *Edinburgh*, and give him Notice, that upon his first Transgression they would imprison him according to Law. But the Appellant, notwithstanding the Magistrates Prohibition, preach'd and perform'd Divine Service the Lord's Day following; whereupon the Magistrates committed him to the Prison of the *Tolbooth*, there to remain until he should find Sureties to obey the Sentence, or remove out of their Bounds.

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The Appellant being thus imprisoned, gives in a Bill of Suspension to the Lords of Session, craving the Magistrates Decree to be suspended, and himself set at Liberty ; which Bill being heard by the Lords, with the Answers made thereto, they refused it, and the Appellant giving in a second Bill to the Effect aforesaid, the Lords of Session, after a new and full Hearing, again refused the Desire thereof; whereupon the Appellant thought fit by his Proctor, to protest against the Lords of Session, and their said Deliverance, and to appeal to the Queen's Majesty, and the Honourable House of Lords, for Justice and Redress.

And the Appellant having by his Complaint to the House of Lords exhibited the said Appeal, and the Lords having received the same, but withal declared by their Order, that the Prosecutors shall be at Liberty, upon the Hearing of this Cause, to argue in the first Place, whether the said Appeal be regularly and properly laid before them or not. The Respondents do humbly conceive, That there was no Place for this Appeal ; and, That the said Appeal is neither regularly nor properly made before the Lord's House, for the Reasons following, *viz.*

First, There is no Place for this Appeal from the Sentence of the Presbytry of *Edinburgh*, because the Presbytry is only a subordinate Ecclesiastick Judicatory, from which, Appeals in course lie to the superiour Judicatories of the Provincial Synod, and General Assembly ; and if the Appellant thought himself grieved by the Sentence of the Presbytry, and omitted this known and proper Remedy, he cannot in Law, or good Order, appeal from the Presbytry to the Honourable House of Lords, who in all appealable Cases are known to be only Judges in the last Resort.

Secondly, If this Appeal be from the Sentence of the Presbytry to the House of Lords, there is no proper Defenders or Contradictors summoned or called, it being undoubted in Law that the Presbytry's Sentence cannot be reviewed, unless they themselves were called to answer for it, and that the Respondents are not the Persons to make Answer in the Case.

Thirdly, Altho' the Appellant pretends only to appeal from the Decree of the Lords of Session, and the Sentence of the Magistrates, it's evident, that he directly Libels the Sentence of the Presbytry, as groundless and illegal, and therefore to be reviewed ; which upon the matter, is an Appeal from the Presbytry against it. But further, Seeing it is manifest that the Sentence of the Magistrates was purely Executive ; and that they were only concerned to make the Sentence of the Presbytry effectual, as they were obliged to do by Law, (particularly by the Act of Parliament, 1693, for settling the Quiet and Peace of the Church, whereby it is expressly enacted, that all Magistrates, Judges, and Officers of Justice, give all due Assistance, for making the Censures of the Church and Judicatories thereof to be obeyed) without inquiring into the Reasons of that Sentence, which was wholly *alterius fori*, and not liable to their Cognition : Therefore the Magistrates cannot be questioned for what they did in Obedience to the Law, unless they had exceeded their Authority in the Execution, which they did not, nor is it pretended by the Appellant.

Fourthly, But if the Magistrates had exceeded in the Execution, the Appellant had the obvious Remedy which he laid hold on, *viz.* To complain to the Lords of Session, by a Bill of Suspension. But the Lords of Session did twice refuse his Bill, as there was no reason for granting it. It's certain in Law no Appeal can be made from the Execution of any Sentence, unless the Appeal be first made against the Sentence it self ; which no doubt is what the Appellant principally intends. But since the Sentence,

Sentence, as above, is the Sentence of an Ecclesiastick Court; in a Matter only under the Cognition of the Church, and to be remedied (if a-
miss) by it's superior Judicatories, it's hoped, their Lordships will find
the Appeal was unlawfully made; for it's supposed, that even in the
Church of *England*, there are Writs issued out in Course, for executing
their Ecclesiastick Sentences, as the Writ *de Excommunicato Copiendo*, tho'
a Civil Writ, yet being a Writ of Execution of an Ecclesiastick Sentence,
unless the Sentence be first reviewed by an Ecclesiastick Judicatory, there
lies no Appeal against the Writ, as being purely Executive.

Fifthly, Because before the late happy UNION of the two Nations,
it was never known that any Appeal from the Ecclesiastick Judicatory
of the Church, lay properly or regularly to the Parliament of *Scotland*;
nor can any President be produced of such Appeals brought.

That the Laws the Respondents humbly rely upon for full Justification
of both the Presbytry's and their own Proceedings in this Case against the
Appellant, and which are all unalterably confirmed by the late happy
UNION, are the Acts following, *viz.*

- I. The Third Act of King *William* and Queen *Mary*, 1689, Entituled,
An Act, abolishing Prelacy.
- II. The Fifth Act of the same Parliament, 1690, Entituled, *An Act, ra-
tifying the Confession of Faith, and settling Presbyterian Church Govern-
ment.*
- III. The Twenty third Act of the same Parliament, Entituled, *An
Act for settling the Peace and Quiet of the Church.*
- IV. The Sixth Act of the Fourth Session of King *William* and Queen
Mary's First Parliament, Entituled, *An Act for taking the Oath of
Allegiance and Assurance.*

And also by a Proclamation of the 21st of *March*, 1706. Entituled, *An
Act and Proclamation anent Intruders into Churches*, (amongst other things)
“ The Queen and the Lords of Her Majesties Privy-Council did thereby
“ prohibit and discharge all Persons who have no Authority from within
“ the Church of *Scotland*, but pretend to a Warrant or Licence from the
“ late exauctorat Bishops, since they were exauctorat, to exercise any part
“ of the Ministerial Function, within this Church, or any Kirk or Paroch
“ thereof, upon Pain of being seized and secured by the Magistrates of the
“ Bounds, in order to their Tryal, pursuant to the Act of Parliament of
“ 1693. and the Magistrates are thereby required to seize and secure such
“ Persons, and punish them according to Law.

*In Consideration of all which, the Respondents humbly hope, That their
Lordships will be of the Opinion, That the Presbytry, Magistrates,
and Lords of the Session, have all acted according to Law; and
that the Appellant's Petition and Appeal shall be dismiss'd.*

Peter King.

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DEFENCE

OF THE

Magistrates of Edinburgh,
and Lords of the Session,
against the Appeal and
Complaint of Mr. James
Greenfield, Clerk.

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